IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	
Howard, *et al.*	Art Unit: 1761
Appl. No.: 10/774,692	Examiner: Tran Lien, Thuy
Filed: February 10, 2004	Atty. Dkt.: 77070
For: FREEZER-STABLE TOASTED BREAD SLICES	Confirmation No. 7393

Appeal Brief
Under 37 C.F.R. § 41

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P.O. Box 1450
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Sir:

(1) Identification

The applicant, application, and examiner's identification data associated with this paper are provided in the above-captioned heading.

Appellants hereby file an Appeal Brief under 37 C.F.R. § 41.37, together with the applicable fee under 37 C.F.R. § 41.20(b)(2).

A Notice of Appeal under 37 C.F.R. §41.31 was previously filed with the applicable fee under 41.20(b)(1) on May 15, 2006.

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(3) Real Party in Interest

The real party in interest in this case is *Kraft Foods Holdings, Inc.*

An Assignment transferring all right, title and interest in the present application from all the named inventors to that entity is recorded on Reel 015662, Frame 0316.

(4) Related Appeals and Interferences

Appellants are not aware of any other appeals or interferences that will directly affect, be directly affected by, or have a bearing on the Board's decision in the present appeal.

(5) Status of Claims

Claims 11-20, 22-29, and 31-33 are rejected.

Claims 1-10, 21 and 30 are canceled.

Claims 11-20, 22-29, and 31-33 are being appealed.

(6) Status of Amendments

An amendment was filed on April 11, 2006 subsequent to final rejection, and the entry of which was approved for purposes of Appeal in the Advisory Action dated April 20, 2006.

(7) Summary of Claimed Subject Matter

I. Concise Explanation of the Subject Matter Defined in Independent Claims and Separately Argued Dependent Claims

a) Independent Claim 11

Independent claim 11 is directed to a process (101-102, FIG. 1; page 4, lines 21-23) for making a sliced bread product (23, FIG. 2) comprising:

providing a bread slice with a crust portion (1, FIG. 2),

toasting (101, FIG. 1; page 4, line 23 - page 5, line 27) the bread slice, and

compressing (102, FIG. 1; 201, FIG. 2; page 5, line 28 - page 7, line 3) the toasted bread slice (20, FIG. 2) effective to crack (11, FIG. 2) the crust portion (1, FIG. 2) without permanently and substantially flattening the bread slice (20, FIG. 2), wherein the compressing (102, FIG. 1; 201, FIG. 2) without permanently and substantially flattening the toasted bread slice (20, FIG. 2) comprises compressing the toasted bread slice (20, FIG. 2) having an original thickness (t, FIG. 2) to a reduced thickness (22, FIG. 2) of about 40 to about 60% of the original thickness (t, FIG. 2) while compression is being applied so that the bread crust portion (20, FIG. 2) is cracked (11, FIG. 2) and the bread slice (23, FIG. 2) returns to at least 90% (t_1, FIG. 2) of the original thickness (t, FIG. 2) after the step of compressing (102, FIG. 1; 201, FIG. 2; pg. 9, lines 10-19; page 17, lines 4-6).

As claimed, the compressive force implicitly will be applied to the toasted slice of bread in a balanced manner sufficient to induce the crusts to bend outward partly enough for the fissures to form in the crust, but not so much force that the crust structurally collapses or ruptures in a manner such that the bread slice cannot substantially rebound and recover a significant part of its original shape after the compressive force is discontinued (page 2, lines 12-17). This controlled compression treatment performed on a toasted bread slice provides bread slices that inherently having "cracked" crusts that remain pleasantly chewable and crunchy in texture and palatability, even after being frozen and reheated (page 2, lines 2-11; page 4, lines 15-20; page 6, lines 12-14).

b) Dependent Claim 12

Dependent claim 12 further specifies that the compressing (101, FIG. 1; 201 FIG. 2) comprises feeding roller (21, FIG. 2; page 6, line 22 - page 7, line 2) contact pressure applied to a side (10, FIG. 2) of the toasted bread slice (20, FIG. 2).

c) Dependent Claim 17

Dependent claim 17 further specifies an additional process step of applying an edible oil-containing substance to the cracked crust portion (103, FIG. 1; 202, FIG. 2; page 3, lines 12-4; page 7, lines 4-10; page 9, lines 20-24). The oil treatment of the cracked crusts further reduces hardness development in the bread crust.

d) Dependent Claim 18

Dependent claim 18 further specifies an additional process step comprising freezing the toasted bread slice (105, FIG. 1; page 7, lines 14-17; page 10, lines 4-5).

e) Dependent Claim 19

Dependent claim 19 further specifies an additional process step comprising reheating the frozen bread slice so as to provide a bread slice having a chewable crust (107, FIG. 1, page 7, lines 21-25). This claim depends from intervening claim.

f) Dependent Claim 22

Dependent claim 22 further specifies that the bread slice comprises a crumb surrounded at least in part by the crust portion and toasting the bread slice comprises browning the crumb (page 2, lines 6-7; page 3, lines 1-3; page 4, lines 25-30; page 5, lines 4-5).

g) Independent Claim 23

Independent claim 23 is directed to a process (100, FIG. 1; 200, FIG. 2) for making a reheatable frozen sandwich (25, FIG. 2) comprising,

- providing bread slices having crusts which are toasted and compressed in the same manner as discussed above in connection with claim 1, and further

- constructing a sandwich (25, FIG. 2) by placing an edible filling (26-29, FIG. 2) between the toasted bread slices (241-242, FIG. 2) having cracked crusts (104, FIG. 1; page 2, lines 21-23; page 7, lines 11-13), and

- freezing the sandwich (105, FIG. 1; page 2, lines 23-34; page 7, lines 14-17; page 18, lines 11-13). When reheated, frozen sandwiches constructed with toasted bread slices having the cracked crusts have crunchy yet tender edges, which are significantly more pleasant to chew and eat than sandwiches made without cracking the crusts (page 2, lines 24-29; page 20, lines 6-8; page 22, lines 17-19, 27-30).

h) Dependent Claim 25

Dependent claim 25 further specifies that the compressing comprises applying roller contact pressure to a side of each toasted bread slice (see claim 12 synopsis above).

i) Dependent Claim 28

Dependent claim 28 further specifies the additional step of applying an edible oil-containing substance to the cracked crust before performing any freezing and reheating of the toasted bread slice (see claim 17 synopsis above).

j) Dependent Claim 31

Dependent Claim 31 further specifies that the toasting comprises heating at least one side of a bread slice having a crumb surrounded at least in part by the crust sufficient to brown the crumb (see claim 22 synopsis above).

(8) Grounds of Rejection to be Reviewed on Appeal

1) Whether Claims 11-20, 22-29, and 31-33 are unpatentable under 35 USC §103(a) over Ohmura et al. (U.S. Pat. No. 5,846,585).

(9) Argument

1) Rejection Under 35 U.S.C. § 103(a) Over Ohmura et al. (U.S. Pat. No. 5,846,585).

Claims 11, 15, 16, and 20

Claims 11, 15, 16 and 20 on appeal are directed to a process for providing toasted bread slices having crusts that remain chewable and crunchy in texture, even after the bread slices have been frozen and reheated. This improved crust texture is provided by a process of compressing the toasted bread slice effective to crack the crust portion without permanently and substantially flattening the bread slice. The compressing treatment is controlled effective to avoid permanently and substantially flattening the toasted bread slice by compressing the toasted bread slice having an original thickness to a reduced thickness of about 40 to about 60% of the original thickness while compression is being applied so that the bread crust portion is cracked and the bread slice returns to at least 90% of the original thickness after the step of compressing. The cracked toasted bread slices are highly useful as a food product *per se* or alternatively as a component used in constructing a filled sandwich, that can be frozen for stable storage and later reheating for consumption without the crusts becoming overly hard, tough, dry or difficult to chew.

Applicants point out that Ohmura et al. teaches compression of *baked untoasted loaves* of bread, freezing the loaves of bread while in a state of compression, holding the compressed frozen bread loaves for a substantial amount of time in frozen state until they are reheated just before serving (such as by microwaving), to heat up the bread loaves and recover the compressed volume (see, e.g., Ohmura et al., Example 2).

Ohmura et al.'s baked loaves of bread optionally may be sliced, although the reference in virtually the same breath specifically discourages that practice (col. 6, lines 44-48, 54-60). Pre-sliced baked loaves of bread have been commonly sold in packaged form in bakeries and grocery stores and the like for many years. Ohmura et al.'s teachings do not add anything new in that respect.

Even if Ohmura et al.'s baked bread loaf were sliced, Ohmura et al. nowhere teaches or suggests toasting *individual* slices of the baked loaves bread *followed* by a sliced toast (not loaf) compression treatment that induces crust cracking in a controlled amount to reduce toast thickness about 40% to about 60% per slice with recovery of at least about 90% original thickness after compression is relieved, before Ohmura et al. implements the freezing and reheating treatments described therein. The working examples of Ohmura et al. instead describe, *inter alia*, baking, compressing, freezing and microwave reheating of *unsliced* loaves of bread (e.g., see Ohmura et al., Examples 2, 4-7, 18-33).

Ohmura et al. has a stated objective of restoring bulk in the compressed and frozen food product back to a size approximating the size of the product that existed immediately after baking. (Ohmura et al., col. 3, lines 17-21, col. 4, line 55 to col. 5, line 19, col. 11, lines 48-52). From a technical standpoint, one of ordinary skill would understand that it is imperative for Ohmura et al.'s loaves of baked bread (slice or otherwise) to retain sufficient moisture and sufficient protein in the form of wheat gluten present in the compressed and frozen baked product in order to recover or restore volume *at the time of reheating the frozen good.* The baked bread of Ohmura et al. must retain springiness and ductility to the extent the protein content of the frozen *baked untoasted* bread loaves remain *hydrated* (i.e., "water-containing") and still strong enough to support the objective of volume recovery upon being reheated out of the compressed frozen state. Indeed, Ohmura et al. specifically discuss how moisture content is crucial in Ohmura et al.'s baked bread to support the "internal vibration heating" mechanism used to restore bulk in the frozen bread during microwave heating (Ohmura et al., col. 11, line 48 to col. 12, line 29). One of ordinary skill in the art would appreciate that these characteristics are inconsistent with a toasted individual slice of bread.

The problem to be solved in the present invention is completely different from Ohmura et al.'s, and, not surprisingly, the respective solutions fundamentally differ as well.

In the instant application, the problem confronted relates to previously-baked bread that is 1) sliced, 2) *toasted*, and, after freezing, 3) micro-waved or otherwise reheated. The bread slice is toasted to provide crunchiness of the side or crumb surface. Prior to the present invention, after freezing and later microwaving or otherwise reheating toast by the consumer, this would make the outside or perimeter crust extremely dried out, hard, and difficult to chew.

Therefore, the problem addressed by the present inventors was how to make this otherwise dried out, hard, and tough crust area acceptable to consumers. The present inventors' solution is to physically crack (to break) the dried-out bread fibers in a slice of toast in a controlled manner as claimed before any freezing and reheating of the toasted bread. That is, a brief compression is done on the toasted bread slice adequate to snap the toughest crust bread fibers in a slice toast and then the compressive force is removed (e.g., by rolling pressure contact made across the crumb or side). In this way, when the consumer bites into the cracked toasted slice of bread, such as after freezing and reheating, the toughest fibers have been previously broken during cracking and are therefore easier to chew.

The Final Office Action (page 3) of 2/14/2006 states "[i]t is notoriously well known in the art to toast bread product."

Applicants have no disagreement with this statement *per se.*

But baking, then slice toasting, then freezing, then micro-waving or otherwise reheating toasted slices of bread creates a problem - tough crust, which is quite difficult to solve. Ohmura et al. did not recognize nor solve this problem. Moreover, Applicants have discovered an effective solution for the problem which is applied during toast production via the included cracking procedure as recited in the present claims on appeal.

As noted, Ohmura et al. nowhere describes toasting bread slices in particular, much less prior to a mechanical compression treatment. Instead, Ohmura et al. describes heating fermented bread dough in an oven for baking at a temperature of about 150 to 250°C for 5 to 30 minutes (see, Ohmura et al., col. 6, lines 39-43).

Applicants point out that Ohmura et al. is essentially attempting to provide a very moist bread similar to a fresh bread, whereas the present invention relates to overcoming a problem inherent in a very dry slice of bread where the crust has been exposed to high heat twice already and becomes, after microwaving (heated a third time) by the eventual consumer, extremely tough unless processed according to the present invention. Ohmura et al., instead, compresses the bread, holds the bread in compression while freezing takes place and keeps the bread compressed until frozen solid or until the consumer heats it up in the microwave just before its consumption (see, Ohmura et al., e.g., Examples 2, 4-7, 18-33); whereas the present invention instead compresses a sliced toast as part of a relatively rapid operation and with

enough force to break the toughest fibers in the crust area to effectively balance significant recovery of thickness with control of hardness/chewiness in the reheated frozen product.

Again, Ohmura et al. nowhere mentions toasting, and this is not surprising given that their invention relates to providing fresh baked bread that is compressed, frozen and reheated, whereas in the present invention the bread slices are always toasted before freezing treatment which further dries the toast slices out and otherwise increases their vulnerability to acquiring hardness if not pre-cracked pursuant to the invention. Ohmura et al. instead prefers very moist bread, whereas in the present invention the bread is sliced and then toasted to drive out moisture and gain pleasant crunchiness, the amount of which is controlled to a texturally desirable level by the cracking procedure. Ohmura et al. desire flexible and ductile bread so that it will recover the vast majority of its volume when microwaved by the consumer, whereas in the present invention after toasting the bread slice, major parts of the crust area are brittle. Also, Ohmura et al. bakes the bread once, whereas, in the present invention, after baking, the bread slice is toasted to essentially provide two significant heat treatments, the second of which (the toasting) drives off moisture and creates a structure in the crust which is especially tough and difficult to chew when the product is microwaved by the consumer *unless* it has been processed according to the present invention.

As can be appreciated, a toaster, toaster oven, flat grill-toaster or the like works by applying radiant or conductive heat directly to a pre-baked bread slice, not dough, such that when the pre-baked bread slice's surface temperature reaches a toasting temperature, which can depend on the type of bread crumb, a change known as the Maillard reaction begins in which sugars and starches start to caramelize - turn brown - and to take on intense flavors, forming toast. Ohmura et al. only describes baking or semi-baking bread, not toasting.

Applicants acknowledge that Ohmura et al. mention "slicing" at Column 6, line 47 thereof. However, viewing the entire relevant passage in context (i.e., Col. 6, lines 39-64), one of ordinary skill would appreciate that "slicing" would not be optimal in Ohmura et al.'s practice because moisture would be expected to escape from the baked bread if sliced. The Final Office Action (page 2) references Ohmura et al.'s disclosure at Col. 6, lines 45-50 that " 'it may be subjected to treatment capable of decreasing its bulk after the division (for

example, slice'," and states "This disclosure clearly suggests that the compression can be applied to individual slice of bread." Appellants respectfully disagree and again point out that any bread slice suggested by Ohmura et al. in this respect is at most *only baked* and untoasted at the time of "the treatment capable of decreasing its bulk after the division" mentioned at Col. 6, line 47 thereof. Moreover, Ohmura et al. only describes and exemplifies compression conducted on whole loaves of bread; there is no enabling disclosure provided in Ohmura et al. teaching one of ordinary skill how they might go about conducting compression on single slices of bread. Ohmura et al.'s referenced disclosure at Col. 6, lines 45-50 thereof, if anything, is understood by one of ordinary skill to suggest that an entire loaf of bread is subjected to the bulk decreasing treatment, and not individual slices of bread.

Of course, in the present invention, not only is the bread sliced, which slicing will result in some moisture release, but then the bread slice is also toasted to significantly reduce moisture further still, which, in the absence of the compression processing according to the present invention, would create an outer crust that becomes, after freezing and microwaving (reheating), extremely tough and difficult to chew, presenting a completely different problem than the one(s) faced by Ohmura et al.

Further, Ohmura et al. state that it is preferable to have a product where exposure of the crumb portion of the baked bread is minimized and that the crust portion preferably is at least 70% of the total surface area to minimize moisture loss (Ohmura et al., Col. 6, lines 57-64). By comparison, the bread slice crust in the present invention typically only represents a minor portion such as about 15% of the total surface area of the slice of toast, and almost all of the moisture is lost during toasting. This also indicates why the problem faced and solved in the present invention is different from Ohmura et al.'s and why the solution of Ohmura et al. is not relevant to the present invention.

In view of at least the above reasons, Appellants submit that claims 11, 15, 16, and 20 are patentable over Ohmura et al., and, accordingly, reversal of this rejection is respectfully requested.

Claims 12-14

Claims 12 and 13 on appeal recite roller contact pressure applied to a side of a slice of toast to crack the crusts of the slice of toast, while claim 14 on appeal recites a reciprocal patent press member contacted a side of the slice of toast for this purpose. The application or compressive force to a side or crumb of an individual slice of toast as in the present invention (e.g., see FIG. 2) is not taught nor suggested by Ohmura et al.'s disclosure of compressing an entire loaf of bread (e.g., see Ohmura et al., Example 2, col. 21, lines 30).

The Final Office Action (page 3) states that: "Ohmura et al teach the same method of compression" as the present application.

However, conclusory statements of similarity or motivation, without any articulated rationale or evidentiary support, do not constitute sufficient factual findings.

The compression treatments in Ohmura et al. are generally described therein as occurring before freezing "without relieving the pressure", or alternatively simultaneous with or after freezing (Ohmura et al., col. 8, lines 54-64). In Ohmura et al., there is no cracking of a crust of a slice of toast in Ohmura et al. via compression, which is relieved so that the toast can recover at least 90% thickness *prior to freezing*. Instead, Ohmura et al.'s approach is consistent with a moist bread product where the protein is hydrated and ductile and where Ohmura et al.'s goal is to provide spring back in the bread which is close to its original volume upon reheating in a microwave. However, the compression of the toasted bread slices in the present application is relatively rapid and designed to fracture the extremely tough, dried out, twice heat-treated outer crust part of a toasted bread slice.

Moreover, it is impossible for Applicants to make any direct comparison with an actual example from Ohmura et al. to experimentally test the assertion made in the Final Office Action that "...any benefit resulting from the compression will obviously be found in the Ohmura et al product," as was suggested in the Final Office Action, since treatment of an *individual toasted* slice of bread is nowhere to be found within the four corners of Ohmura et al. Assertions of inherency can not be properly premised on hypothetical prior art. Applicants can not be put in a position of comparing against themselves in order to rebut an alleged *prima facie* case.

In view of at least the above reasons, Appellants submit that claims 12, 13, and 14 are patentable over Ohmura et al., and, accordingly, reversal of this rejection is respectfully requested.

Claim 17

Claim 17 on appeal relates to a further embodiment providing for application of oil to the perimeter crust area of a piece of toast after cracking and prior to any freezing and reheating of the toast. This optional further treatment further assists in the reduction of and prevention of hard, tough and dry crust occurrence in the reheated slices of toast without adding moisture. The environment of the present invention does not allow for adding water without making the toast soggy and losing the crunchiness on the cut, crumb surface. The crust oiling treatment is an additional treatment that can be used in the same process including the crust cracking treatment for purposes of providing advantageous crust attributes.

According to the Final Office Action (page 3): "As to applying oil, applicant does not argues why applying oil would not have been obvious and argues that Ohmura et al do not teach treatments of individual toasted slices. As pointed out above, Ohmura et al. do teach treating slices."

Appellants point out that the initial burden of proof as to establishing *prima facie* obviousness rests upon the Patent Office, and not Applicants to prove a negative in this respect. *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985). Moreover, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 CCPA 1974). Again, Ohmura et al. fails to teach treatment of individual slices of toast at all, much less oil treatment of crusts after cracking and before freezing.

In view of at least the above reasons, Appellants submit that claim 17 is patentable over Ohmura et al., and, accordingly, reversal of this rejection is respectfully requested.

Claim 18

In the present claim 18 on appeal an additional process step comprising freezing the toasted bread slice after the cracking step (105, FIG. 1; page 7, lines 14-17; page 10, lines 4-5). The cracking step of the present invention will not work on a frozen stiff slice of toasted bread. Instead, it is performed on the toast *per se*.

Ohmura et al., by comparison, exerts compression upon a breaded product, viz., a baked loaf of bread, and maintains the compression during freezing storage period via packaging or at least until the bread is frozen solid under compression, and the frozen stiff good is later unpackaged and then reheated during which it recovers bulk via "internal vibration heating" of its water content (Ohmura et al., Abstract; Example 2). Ohmura et al. is freezing a different product that the present claims on appeal.

In view of at least the above reasons, Appellants submit that claim 18 is patentable over Ohmura et al., and, accordingly, reversal of this rejection is respectfully requested.

Claim 19

Ohmura et al. nowhere describes reheating a frozen toast that has been pre-cracked in accordance with the present claimed invention. Instead, Ohmura et al. exerts compression upon a breaded product, viz., a baked loaf of bread, and maintains the compression during freezing storage period via packaging or at least until the bread is frozen solid under compression, and the frozen stiff good is later unpackaged and then reheated during which it recovers bulk via "internal vibration heating" of its water content (Ohmura et al., Abstract; Example 2).

Again, and as pointed out above in connection with the discussion of Claim 11, Ohmura et al. provides a baked or semi-baked loaf with substantially high moisture content at the time of compressing and freezing. Ohmura et al. (Col. 6, lines 18-24) specifically state that: "With respect to a food having a relatively low moisture content, once the bulk thereof is decreased, the bulk can be hardly restored....Therefore such foods are scarcely become the subjects of the present invention." Ohmura et al. prescribes a high moisture bread environment and says one cannot be successful with relatively low moisture.

Ohmura et al. do not address the problem solved in the present invention; i.e., toasted bread crusts that are overly hard, tough, dry and difficult to chew after freezing and reheating the slice of toast; a problem which is solved in the present invention via the pre-cracking procedure performed before freezing the toast. In the present invention, moisture is driven out of the toasted slice of bread during toasting to provide a substantially low moisture product because a crunchy product is desired from toasting. Compression is released after the crusts are cracked, and the toasted product is not and need not be compressed during freezing, and it does not regain volume during microwaving reheating, all unlike Ohmura et al.

In view of at least the above reasons, Appellants submit that claims 19 and 18 are patentable over Ohmura et al., and, accordingly, reversal of this rejection is respectfully requested.

Claim 22

Dependent claim 22 further specifies that the bread slice comprises a crumb surrounded at least in part by the crust portion and toasting the bread slice comprises browning the crumb (page 2, lines 6-7; page 3, lines 1-3; page 4, lines 25-30; page 5, lines 4-5).

Ohmura et al., instead, bakes bread loaves and compresses the baked bread loaves, which apparently may be optionally sliced but nonetheless handled and processed in loaf form. That disclosed subject matter of Ohmura et al. does not teach or suggest the invention of Claim 22 on appeal.

In view of at least the above reasons, Appellants submit that claim 22 is patentable over Ohmura et al., and, accordingly, reversal of this rejection is respectfully requested.

Claims 23, 24, 29, 32, 33

Ohmura et al. fail to teach or suggest cracking of crusts of toasted bread slices prior to their use in reheatable sandwich construction and a freezing step as recited in claim 23 on appeal. Ohmura et al. does not teach or suggest providing cracked toasted bread slices that are highly useful in constructing a sandwich that is frozen for stable storage, and which can be later reheated for consumption without the crusts becoming overly hard, tough, dry and difficult to chew.

The only working examples described by Ohmura et al. concerning breads and "fillings" relate to *unbaked, untoasted* bread *dough* that is filled or topped with a filling *before* compression, freezing, and microwave heating (e.g., see Ohmura et al., Examples 34-38). While Ohmura et al. elsewhere suggests that filling introduction may be practiced after heat treatment or after heat treatment and compression (e.g., see col. 19, lines 45-54), the fact remains that the only pre-compression and pre-freezing heat treatment described by Ohmura et al. is baking (and not toasting).

The requisite teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The mere fact that references can be combined or modified does not render the proposed combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

In view of the above, Applicants respectfully submit that a *prima facie* case of obviousness has not been established based on Ohmura et al. against any of the present claims 23, 24, 29, 32 and 33, accordingly, they request reconsideration and reversal of this rejection.

Claims 25-27

Claims 25-27 on appeal, similar to claims 12-14 (11) discussed above, require that the compression treatment applied to a side of the toasted bread slice to provide the controlled cracking and post-compression crumb thickness recovery before freezing as recited. Again, there is no cracking of a crust of a slice of toast in Ohmura et al. via compression, which is relieved so that the toast can recover at least 90% thickness *prior to freezing*. The application or compressive force to a side or crumb of an individual slice of toast as in the present invention (e.g., see FIG. 2) is not taught nor suggested by Ohmura et al.'s disclosure of compressing an entire loaf of bread (e.g., see Ohmura et al., Example 2, col. 21, lines 30).

In view of at least the above reasons, Appellants submit that claims 25, 26 and 27 are patentable over Ohmura et al., and, accordingly, reversal of this rejection is respectfully requested.

Claim 28

Claim 28 on appeal, similar to claim 17 (11) discussed above, further provides for application of oil to the perimeter crust area of a piece of toast *after* cracking and *before* any freezing and reheating of the toast specifically for the purpose of further reducing the toughness of the dried out crust without adding moisture, and it works.

Again, Ohmura et al. fails to teach treatment of individual slices of toast at all, much less oil treatment of crusts after cracking and before freezing.

In view of at least the above reasons, Appellants submit that claim 28 is patentable over Ohmura et al., and, accordingly, reversal of this rejection is respectfully requested.

Claim 31

Dependent claim 31, similar to claim 22 (11) discussed above, further specifies that the bread slice comprises a crumb surrounded at least in part by the crust portion and toasting the bread slice comprises browning the crumb (page 2, lines 6-7; page 3, lines 1-3; page 4, lines 25-30; page 5, lines 4-5). As noted above, Ohmura et al., instead, bakes bread loaves (sliced or otherwise) and compresses baked bread loaves, which apparently may be optionally be sliced but handled and processed in loaf form. That disclosed subject matter of Ohmura et al. does not teach or suggest the invention of Claim 31 on appeal.

In view of at least the above reasons, Appellants submit that claim 31 is patentable over Ohmura et al., and, accordingly, reversal of this rejection is respectfully requested.

Conclusion

For the reasons set forth above, Appellants submit that the claims presently pending in the above-captioned application meet all of the requirements of patentability. It is therefore respectfully requested that the Honorable Board reverse the Examiner and remand this application for issue.

Respectfully submitted,

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(10) Claims Appendix

11. A process for making a sliced bread product comprising providing a bread slice with a crust portion, toasting the bread slice, and compressing the toasted bread slice effective to crack the crust portion without permanently and substantially flattening the bread slice, wherein the compressing without permanently and substantially flattening the toasted bread slice comprises compressing the toasted bread slice having an original thickness to a reduced thickness of about 40 to about 60% of the original thickness while compression is being applied so that the bread crust portion is cracked and the bread slice returns to at least 90% of the original thickness after the step of compressing.

12. The process of claim 11, wherein the compressing comprises feeding roller contact pressure to a side of the toasted bread slice.

13. The process of claim 11, wherein the compressing comprises conducting the toasted bread slice through a pressure nip defined by at least one roller.

14. The process of claim 11, wherein the compressing comprises contacting a reciprocal platen press member with a side of the toasted bread slice.

15. The process of claim 11, wherein the toasting of the bread slice comprises grilling at least one side of the bread slice at a temperature of at least about 475°F for a predetermined amount of time.

16. The process of claim 15, wherein the predetermined amount of time for toasting is less than about 60 seconds.

17. The process of claim 11 further comprises applying an edible oil-containing substance to the cracked crust portion.

18. The process of claim 11 further comprises freezing the toasted bread slice.

19. The process of claim 18 further comprises reheating the frozen bread slice so as to provide a bread slice having a chewable crust.

20. The process of claim 11, wherein the bread slice has an original thickness and the compressing without permanently and substantially flattening the toasted bread slice comprises compressing the toasted bread slice so that the bread crust portion is cracked and the bread slice retains at least 90% of the original thickness.

22. The process of claim 11, wherein the bread slice comprises a crumb surrounded at least in part by the crust portion and toasting the bread slice comprises browning the crumb.

23. A process for making a reheatable frozen sandwich comprising, providing bread slices having crusts, toasting the bread slices, compressing the toasted bread slices to crack the crusts without permanently and substantially flattening the bread slices, constructing a sandwich by placing an edible filling between the toasted bread slices having cracked crusts, and freezing the sandwich, wherein the compressing without permanently and substantially flattening the toasted bread slice comprises compressing the toasted bread slice having an original thickness to a reduced thickness of about 40 to about 60% of the original thickness while compression is being applied so that the bread crust is cracked and the bread slice returns to at least 90% of the original thickness after the step of compressing is completed.

24. The process of claim 23 further comprises packaging the sandwich.

25. The process of claim 23, wherein the compressing comprises applying roller contact pressure to a side of each toasted bread slice.

26. The process of claim 23, wherein the compressing comprises feeding each toasted bread slice through a pressure nip defined by at least one roller.

27. The process of claim 23, wherein the compressing comprises contacting a side of each toasted bread slice with a reciprocal platen press member.

28. The process of claim 23 further comprises applying an edible oil-containing substance to the cracked crust before performing any freezing and reheating of the toasted bread slice.

29. The process of claim 23, wherein the compressing without permanently and substantially flattening the toasted bread slices comprises compressing each toasted bread slice having a respective original thickness so that each respective bread crust is cracked and the respective bread slice returns to at least 90% of the respective original thickness.

31. The process of claim 23, wherein toasting comprises heating at least one side of a bread slice having a crumb surrounded at least in part by the crust sufficient to brown the crumb.

32. The process of claim 23, wherein the toasting of the bread slice comprises grilling at least one side of the bread slice at a temperature of at least about 475°F for less than about 60 seconds.

33. The process of claim 32, the toasting of the bread slice comprises heating at least one side of the bread slice with an impingement oven for a length of time sufficient for toasting.

(11) Evidence Appendix

None.

(12) Related Proceedings Appendix

None.